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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 743

UNITED STATES OF AMERICA EX REL. W. B. PYRON, PETITIONER,

vs.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, AND C. C. MOORE, COMMISSIONER OF THE GENERAL LAND OFFICE

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED FEBRUARY 18, 1931

CERTIORARI GRANTED MARCH 2, 1931

(35,665)

(35,665)

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IN SUPREME COURT OF DISTRICT OF COLUMBIA

At Law. No. 77631

W. B. PYRON, Petitioner,

vs.

RAY LYMAN WILBUR, Secretary of the Interior, and C. C. Moore, Commissioner of the General Land Office of the United States, Interior Building, Respondents

PETITION FOR WRIT OF MANDAMUS—Filed January 28, 1930

The petition of W. B. Pyron respectfully represents:

1

That the petitioner is and was at all times herein mentioned a citizen of the United States and a resident of Los Angeles, California, and brings this petition for a writ of mandamus against the respondents, Ray Lyman Wilbur, Secretary of the Interior, and C. C. Moore, Commissioner of the General Land Office of the United States, both of whom are sued in respect of their official duties as hereinafter more particularly set forth.

2

That the respondent, Ray Lyman Wilbur as Secretary of the Interior, and the respondent C. C. Moore, as Commissioner of the General Land Office of the United States under the supervision and control of the Secretary of the Interior, are charged with the administration of the laws of the United States relative to the selling, leasing, care, and disposition of the public lands, and especially that certain act of Congress approved February 25, 1920 (41 Stat. 437).

[fol. 2] 3

That the intent and purpose of said act of February 25, 1920, as disclosed by the title thereof, is—

"* * * to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain."

And in order to give effect to the purpose thus expressed, section 1 of said act provides that—

"* * * deposits of coal, phosphate, sodium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, * * * shall be subject to disposition in the form and manner provided by this act to citizens of the United States, or to any association of such persons * * *"

and section 13 of said act provides:

"That the Secretary of the Interior is hereby authorized, under such necessary and proper rules and regulations as he may prescribe, to grant to any applicant qualified under this act a prospecting permit, which shall give the exclusive right, for a period not exceeding two years, to prospect for oil or gas upon not to exceed two thousand five hundred and sixty acres of land wherein such deposits belong to the United States and are not within any known geological structure of a prducing oil or gas field upon condition that the permittee shall begin drilling operations within six months from the date of the permit, and shall, within one year from and after the date of permit, drill one or more wells for oil or gas to a depth of not less than five hundred feet each, unless valuable deposits of oil or gas shall be sooner discovered, and shall, within two years from date of the permit, drill for oil or gas to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered. The Secretary of the Interior may, if he shall find that the permittee has been unable with the exercise of diligence to test the land in the time granted by the permit, extend any such permit for such time, not exceeding two years, and upon such conditions as he shall prescribe. Whether the lands sought in any such application and permit are surveyed or unsurveyed the applicant shall, prior to filing his application for permit, locate such lands in a reasonably compact form and according to the legal subdivisions of the public land surveys if the land be surveyed; and in an approximately square or rectangular tract if the land be an unsurveyed tract, the length of which shall not exceed

two and one-half times its width, and if he shall cause to be erected upon the land for which a permit is sought a monument not less than four feet high at some conspicuous place thereon, and shall post a notice in writing on or near said monument, stating that an application for permit will be made within thirty days after date of posting said notice, the name of the applicant, the date of the notice, and such a general description of the land to be covered by such permit by reference to courses and distances from such monument and such other natural objects and permanent monuments as will reasonably identify the land, stating the amount thereof in acres, he shall during the period of thirty days following such marking and posting, be entitled to a preference right over others to a permit for the land so [fol. 3] identified. The applicant shall, within ninety days after receiving a permit, mark each of the corners of the tract described in the permit upon the ground with substantial monuments, so that the boundaries can be readily traced on the ground, and shall post in a conspicuous place upon the lands a notice that such permit has been granted and a description of the lands covered thereby * * *"

And section 14 of said act provides:

"That upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit. * * * The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12½ per centum in amount or value of the production; and under such other conditions as are fixed for oil or gas leases in this act, the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe * * *."

And section 32 of said act provides:

"That the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this act, also to fix and determine the

boundary lines of any structure, or oil or gas field, for the purposes of this act * * *."

And section 37 of said act provides:

"That the deposits of coal, * * * oil, oil shale, and gas, herein referred to, in lands, valuable for such minerals, * * * shall be subject to disposition only in the form and manner provided in this act * * *."

4

That in carrying out and accomplishing the purposes of said act of February 25, 1920, the Secretary of the Interior on March 11, 1920, promulgated the regulations concerning oil and gas permits and leases purporting to be authorized by said act and designated as "Department of Interior, General Land Office—Circular No. 672," which regulations in prescribing the necessary qualifications of applicants for prospecting permits under said act provide that—

"* * * permits may be issued to (a) citizen of the United States; (b) an association of such citizens; (c) a corporation organized under the laws of the United States or any State or Territory thereof; or (d) a municipality."

And in setting forth the form and contents of the applications for prospecting permits provided for by section 13 of said act, provide that—

"Applications for permits should be filed in the proper district land office, addressed to the Commissioner of the General Land Office, be suspended for 30 days to enable preference-right claims to be presented before action, and after due notation then forwarded for his consideration, with a full report as to status and conflicts. No specific form of application is required, and no blanks will be fur- [fol. 4] nished, but it should cover, in substance, the following points, and be under oath:

"(a) Applicant's name and address.

"(b) Proof of citizenship of applicant, by affidavit of such fact, if native born; or if naturalized, by a certificate copy of the certificate of naturalization on the form provided for use in public-land matters, unless such a copy is

already on file; if a corporation, by certified copy of the articles of incorporation, and a showing as to the residence and citizenship of its stockholders; if a municipality a showing of (1) the law or charter and procedure taken by which it has become a legal body corporate; (2) that the taking of a permit or lease is authorized under such law or charter; and (3) that the action proposed has been duly authorized by the governing body of such municipality.

"(c) A statement that the applicant is not the holder of more than two other subsisting permits in the same State, nor of any permit in the same geologic structure, together with a statement of any other applications for permits in the same State, in which the applicant is directly or indirectly interested, fully disclosing the nature and extent of such interests. In this connection attention is directed to the limitations and exceptions of Section 27 of the act.

"(d) Description of the land for which the permit is desired, by legal subdivisions if surveyed, and by metes and bounds if unsurveyed, in which latter case, if deemed necessary, a survey sufficient more fully to identify the land may be required before the permit is granted. In order to properly identify unsurveyed lands, great care should be taken, and if practicable the meters and bounds description should be connected by course and distance with some corner of the public land surveys.

"(e) A statement that to the best of applicant's knowledge and belief the land applied for is not within any known geological structure of a producing oil or gas field.

"(f) Three references as to applicant's reputation and business standing.

"(g) If the applicant is claiming a preference right as explained in the next succeeding section of these regulations, he should set up fully the facts upon which such preference right is based, together with a true copy of the posted notice.

"(h) The applicant must furnish a bond, with qualified corporate surety, in the sum of $1,000, conditioned against the failure of the permittee to repair promptly, so far as possible, any damage to the oil strata or deposits resulting from improper methods of operation * * *."

5

That on March 20, 1929, the Secretary of the Interior issued an order, designated as "Department of the Interior Order No. 338," which stated that—

"Registers of local land offices will not receive applications for oil and gas permits after March 12, 1929, and will reject all pending applications for permits. They will forward to the General Land Office all applications for extensions of time, etc., relative to outstanding permits."

[fol. 5] 6

That on or about the 9th day of December, 1929, petitioner advised the register of the United States district land office at Sacramento, California, that petitioner was proposing to file with said register an application for a permit to prospect for oil and gas upon the land hereinafter described, but petitioner was advised by said register that in accordance with the Department of the Interior Order No. 338, above referred to, no applications for permits to prospect for oil and gas were being or could be received by said register and that the proposed application of the petitioner, together with the necessary fee and bond, would not be accepted for filing and would not be filed, but should be forwarded by petitioner to Washington if petitioner contemplated filing suit to compel the acceptance of said application by the Commissioner of the General Land Office of the United States; and that upon presentation to said register of the United States district land office at Sacramento, California, of an application for a permit to prospect for oil and gas upon the land hereinafter described, together with the necessary fee and bond, said register refused and still refuses to accept for filing and to file said application, fee, and bond.

7

That on the 14th day of December, 1929, petitioner presented to respondent C. C. Moore, Commissioner of the General Land Office, at his office in the city of Washington, District of Columbia, an application for a permit under that certain act of Congress approved February 25, 1920 (41 Stat. 437) for the exclusive right for the period of two (2)

years to prospect for oil and gas on the following described land situate in the county of Fresno, State of California, to wit:

Commencing at the southeast corner of section twenty-seven (27), township fifteen (15) south, range twelve (12) east, M. D. B. & M., from which a monument set in the northwest quarter (NW. ¼) of the northwest quarter (NW. ¼) of section thirty-five (35), township fifteen (15) south, range twelve (12) east, M. D. B. & M. is distant south one hundred (100) feet, east one hundred (100) feet; thence north 7,920 feet, m. o. l., to the center of the east line of section twenty-two (22); thence west 2,640 feet, m. o. l., to the center of section twenty-two (22); thence north 3,960 feet, m. o. l., to the center of the south half (S. ½) of section fifteen (15); thence west 2,640 feet, m. o. l., to the northwest corner of the southwest quarter (SW. ¼) of the southwest quarter (SW. ¼) of section fifteen (15); thence south 1,320 feet, m. o. l., to the southwest corner of section fifteen (15), thence west 2,640 feet, m. o. l., to the north quarter corner of section twenty-one (21); thence south 5,280 feet, m. o. l., to the south quarter corner of section twenty-one (21); thence west 2,640 feet, m. o. l., to the northwest corner of section twenty-eight (28); thence south 2,640 feet, m. o. l., to the west quarter corner of section twenty-eight (28); thence east 3,960 feet, m. o. l., to the southeast corner of the southwest quarter (SW. ¼) of the northeast quarter [fol. 6] (NE. ¼) of section twenty-eight (28); thence north 1,320 feet, m. o. l., to the center of the northeast quarter (NE. ¼) of section twenty-eight (28); thence east 1,320 feet, m. o. l., to the southeast corner of the northeast quarter (NE. ¼) of the northeast quarter (NE. ¼) of section twenty-eight (28); thence south 2,640 feet, m. o. l., to the southwest corner of the northwest quarter (NW. ¼) of the southwest quarter (SW. ¼) of section twenty-seven (27); thence east 1,320 feet, m. o. l., to the center of the southwest quarter (SW. ¼) of section twenty-seven (27); thence south 1,320 feet, m. o. l., to the southwest corner of the southeast quarter (SE. ¼) of the southwest quarter (SW. ¼) of section twenty-seven (27); thence west 1,320 feet, m. o. l., to the northwest corner of section thirty-four (34); thence south 2,640 feet, m. o. l., to the west quarter corner of section thirty-four (34); thence east 5,280 feet, m. o. l., to the east quarter corner of section thirty-four (34); thence south

2,640 feet, m. o. l., to the southwest corner of section thirty-five (35); thence east 2,640 feet, m. o. l., to the south quarter corner of section thirty-five (35); thence north 5,280 feet, m. o. l., to the north quarter corner of section thirty-five (35); thence west 2,640 feet, m. o. l., to the point of beginning, being the south half (S. ½) of the southwest quarter (SW. ¼) of section fifteen (15), the east half (E. ½) of section twenty-one (21), the west half (W. ½) and the southeast quarter (SE. ¼) of section twenty-two (22), all of section twenty-seven (27), except the southwest quarter (SW. ¼) of the southwest quarter (SW. ¼), the northwest quarter (NW. ¼) and the north half (N. ½) of the northeast quarter (NE ¼) and the southwest quarter (SW. ¼) of the northeast quarter (NE. ¼) of section twenty-eight (28), the north half (N. ½) of section thirty-four (34) and the west half (W. ½) of section thirty-five (35); all in township fifteen (15) south, range twelve (12) east, M. D. B. & M.

Beginning at the center of section one (1) township sixter (SW. ¼) of the northwest quarter (NW. ¼) of section one (1), township sixteen (16) south, range twelve (12) east, M. D. B. & M.; thence east 1,320 feet, m. o. l.; to the center of the northwest quarter (NW. ¼) of section one (1); thence south 1,320 feet, m. o. l., to the southeast corner of the southwest quarter (SW. ¼) of the northwest quarter (NW. ¼) of section one *one;* thence west 1,320 feet, m. o. l., to the west quarter corner of section one (1); thence north 1,320 feet, m. o. l., to the point of beginning, being the southwest quarter (SW. ¼) of the northwest quarter (NW. ¼) of section one (1), all in township sixteen (16) south, range twelve (12) east, M. D. B. & M.

Beginning at the center of section one (1), township sixteen (16) south, range twelve (12) east; thence east 1,320 feet, m. o. l., to the northeast corner of the northwest quarter (NW. ¼) of the southeast quarter (SE. ¼) of section one (1); thence south 1,320 feet, m. o. l., to the center of the southeast quarter (SE. ¼) of section one (1); thence east 1,320 feet, m. o. l., to the northeast corner of the southeast quarter (SE. ¼) of the southeast quarter (SE. ¼) of section one (1); thence south 1,320 feet, m. o. l., to the southeast corner of section one (1); thence west 2,640 feet, m. o. l., to the south quarter corner of section one (1); thence north 2,640 feet, m. o. l., to the point of beginning, being

the south half (S. ½) of the southeast quarter (SE. ¼) of the northwest quarter (NW. ¼) of the southeast [fol. 7] quarter (SE. ¼) of section one (1); township sixteen (16) south, range twelve (12) east, M. D. B. & M., containing in all 2,560 acres, m. o. l.

8

That said application contained applicant's name and address; that it contained a statement that the applicant was not the holder of any permit in the same State, nor upon the same geologic structure; a description of the land for which permit is desired, by legal subdivisions; a statement that to the best of applicant's knowledge and belief the land applied for is not within any known geological structure of a producing oil or gas field; and three references as to applicant's reputation and business standing; that a copy of said application is attached hereto, marked "Exhibit A" and made a part hereof; that all of said statements were at the same time and now are true.

9

That at the time said applicant presented said application on said 14th day of December, 1929, petitioner tendered to said respondent, the Commissioner of the General Land Office, the fee required by law, to wit, the sum of two ($2.00) dollars for each one hundred sixty (160) acres, or fraction thereof, of the land for which said application was made, the total being the total sum of thirty-two ($32.00) dollars, and a surety bond in the sum of one thousand ($1,000) dollars required by said act, but that said respondent refused, and still refuses, to accept said sum of $32.00, or any part thereof, or said bond of $1,000; that said bond was in the form required by law and the regulations of the General Land Office, on condition that if said permit should be granted that all operations should be conducted in accordance with the approved methods; that all proper precaution should be exercised to prevent waste of oil or gas developed in the lands covered thereby, or the entry of waters through wells drilled by or on behalf of the principal to the oil sand or oil-bearing strata to the destruction of the oil deposits.

10

Petitioner hereby tenders to respondents said sum of thirty-two ($32.00) dollars and said bond of one thousand ($1,000) dollars, and declares that he is at all times ready and willing to deliver same to respondents.

11

That petitioner is not now, nor was he at any of the said times, the owner or holder of any permits or interest in permits upon the same geological structure, nor any other lands of the United States situated within the State of California, and that prior to the presentation to the Commissioner of the General Land Office of the application hereinbefore referred to, no permit had been granted covering any portion of the lands herein described and no other application was of record in said office concerning the same property or any portion thereof.

[fol. 8] 12

That the respondents have failed, neglected, and refused and now refuse to accept for filing and file said application hereinbefore referred to or to grant a permit to the petitioner to prospect for oil and gas on the lands hereinbefore described; that the sole reason given by the respondents for so doing was that the respondent, Ray Lyman Wilbur, as Secretary of the Interior, has withdrawn all lands of the United States from filing for oil and gas prospecting permits.

13

Petitioner avers that, by reason of the refusal of the respondents to accept for filing and file said application for a prospecting permit, he has been deprived of the rights accorded him by the Congress of the United States under the act of February 25, 1920 (41 Stat. 437); that under the provisions of said act of February 25, 1920, petitioner at all times referred to herein was and still is entitled to file an application for, and to have issued to him, a permit to prospect on the lands hereinabove referred to; that under the provisions of said act of February 25, 1920, the Secretary of the Interior is required to accept for filing and to file said application and to issue to petitioner a permit to

prospect on the lands named in said application; that petitioner at all times referred to herein was and still is duly qualified under the provisions of said act of February 25, 1920, to receive the permit applied for; that petitioner at all times has stood and now stands in readiness, and is in fact ready, able, and willing actually and in all respects fully and completely to comply with all the regulations made pursuant to law in respect of duties and obligations of an applicant for a permit and a permittee under the said act of February 25, 1920; that under the act of February 25, 1920, the acceptance for filing and the filing of a duly executed application for a permit to prospect upon public lands subject to disposition under said act, and the issuance to a qualified applicant of a permit to prospect upon such lands when called upon to do so, are purely ministerial duties imposed upon the Secretary of the Interior; that the only discretion allowed the Secretary of the Interior by said act of February 25, 1920, is in the prescribing of rules and regulations which are necessary and proper to carry out and accomplish the purposes of said act, and to fix and determine the boundary lines of any structure or oil or gas field for the purposes of said act; that the word "authorized" as used in section 13 of said act of February 25, 1920, is mandatory and not permissive; that the said Department of the Interior Order No. 338, upon which was based the refusal to accept petitioner's application for a prospecting permit, and the rejection thereof, is contrary to said act of February 25, 1920, and particularly to sections 1 and 13 thereof; that the Secretary of the Interior is without authority under the act of February 25, 1920, to refuse to receive applications for, and to discontinue the granting of permits to prospect on public lands provided for by said act; that the Secretary of the Interior is without authority under the act of February 25, 1920, to refuse to receive or to reject petitioner's application upon [fol. 9] any ground, and especially upon the ground alleged that, in accordance with said Department of the Interior Order No. 338, no applications for permits will be received after March 12, 1929; that any order, rule, or regulation of the Secretary of the Interior instructing the Commissioner of the General Land Office not to receive applications for permits to prospect upon public lands under the act of

February 25, 1920, is invalid and not binding upon petitioner; that said Department of the Interior Order No. 338 is not a necessary or proper rule or regulation authorized by section 32 of said act of February 25, 1920, and does not in any manner carry out or accomplish the purposes of said act, but is contrary to and in conflict with the expressed purpose of the act, which is "to promote the mining of * * * oil, oil shale, gas, and sodium on the public domain"; that the action of the Secretary of the Interior and the Commissioner of the General Land Office in refusing to receive petitioner's application for a permit and in refusing to issue to petitioner a permit to prospect upon the land described in said application, is unreasonable, arbitrary, capricious, and illegal.

14

That petitioner has no plain, speedy, or adequate remedy at law or in equity to correct the error committed by the respondents unless remedy is granted by this honorable court.

Wherefore, the petitioner prays:

First. That a rule be granted by this honorable court requiring Ray Lyman Wilbur, Secretary of the Interior, and C. C. Moore, Commissioner of the General Land Office of the United States, to show cause, by a day to be therein named, why they should not be commanded by a writ of mandamus to accept for filing and to file the petitioner's application hereinbefore referred to and to accept said fee of $32.00, and said bond in the sum of $1,000.00, and thereafter, if no other applicant is found entitled to a preference right thereto, to issue to the petitioner a permit to prospect for oil and gas on the land in said application and herein described.

Second. That a writ of mandamus be granted by this honorable court commanding Ray Lyman Wilbur, Secretary of the Interior, and C. C. Moore, Commissioner of the General Land Office of the United States, to accept for filing and file the petitioner's application hereinbefore referred to and to accept said fee of $32.00, and said bond in the sum of $1,000.00 and therefore, if no other applicant is found entitled to a preference right thereto, to issue to the peti-

tioner a permit to prospect for oil and gas on the land in said application and herein described.

A. W. Gregg, Weston Vernon, Jr., John W. Fisher,
Attorneys for Petitioner.

Duly sworn to by W. B. Pyron. Jurat omitted in printing.

[fol. 10] EXHIBIT "A" TO PETITION—Filed January 28, 1930

Los Angeles, Calif., December 9, 1929.

To the Hon. Commissioner of the General Land Office,
Washington, D. C.

DEAR SIR: W. B. Pyron hereby applies for a permit under that certain act of Congress of February 25, 1920, Public, 146, for the exclusive right for the period of two (2) years to prospect for oil and gas upon the following-described land situate in the county of Fresno, State of California, or so much thereof as may be public land, to wit:

Commencing at the southeast corner of section twenty-seven (27), township fifteen (15) south, range twelve (12) east, M. D. B. & M., from which a monument set in the northwest quarter (NW. ¼) of the northwest quarter (NW. ¼) of section thirty-five (35), township fifteen (15) south, range twelve (12) east, M. D. B. & M. is distant south one hundred (100) feet, east one hundred (100) feet; thence north 7,920 feet, m. o. l., to the center of the east line of section twenty-two (22); thence west 2,640", m. o. l., to the center of section twenty-two (22); thence north 3,960 feet, m. o. l., to the center of the south half (S. ½) of section fifteen (15); thence west 2,640 feet, m. o. l., to the northwest corner of the southwest quarter (SW. ¼) of the southwest quarter (SW. ¼) of section fifteen (15); thence south 1,320 feet, m. o. l., to the southwest corner of section fifteen (15); thence west 2,640 feet, m. o. l., to the north quarter corner of section twenty-one (21); thence south 5,280 feet, m. o. l., to the south quarter corner of section twenty-one (21); thence west 2,640 feet, m. o. l., to the northwest corner of section twenty-eight (28); thence south 2,640 feet, m. o. l., to the west quarter corner of section twenty-eight (28); thence east 3,960 feet, m. o. l., to the southeast corner of

the southwest quarter (SW. ¼) of the northeast quarter (NE. ¼) of section twenty-eight (28); thence north 1,320 feet, m. o. l., to the center of the northeast quarter (NE. ¼) of section twenty-eight (28); thence east 1,320 feet, m. o. l., to the southeast corner of the northeast quarter (NE. ¼) of the northeast quarter (NE. ¼) of section twenty-eight (28); thence south 2,640 feet, m. o. l., to the southwest corner of the northwest quarter (NW. ¼) of the southwest quarter (SW. ¼) of section twenty-seven (27); thence east 1,320 feet, m. o. l., to the the center of the southwest quarter (SW. ¼) of section twenty-seven (27); thence south 1,320 feet, m. o. l., to the southwest corner of the southeast quarter (SE. ¼) of the southwest quarter (SW. ¼) of section twenty-seven (27); thence west 1,320 feet, m. o. l., to the northwest corner of section thirty-four (34); thence south 2,640 feet, m. o. l., to the west quarter corner of sec- [fol. 11] tion thirty-four (34); thence east 5,280 feet, m. o. l., to the east quarter corner of section thirty-four (34); thence south 2,640 feet, m. o. l., to the southwest corner of section thirty-five (35); thence east 2,640 feet, m. o. l., to the south quarter corner of section thirty-five (35); thence north 5,280 feet, m. o. l., to the north quarter corner of section thirty-five (35); thence east 2,640 feet, m. o. l., to the point of beginning, being the south half (S. ½) of the southwest quarter (SW. ¼) of section fifteen (15), the east half (E. ½) of section twenty-one (21), the west half (W. ½) and the southeast quarter (SE. ¼) of section twenty-two (22), all of section twenty-seven (27) except the southwest quarter (SW. ¼) of the southwest quarter (SW. ¼), the northwest quarter (NW. ¼) and the north half (N. ½) of the northeast quarter (NE. ¼) and the southwest quarter (SW. ¼) of the northeast quarter (NE. ¼) of section twenty-eight (28), the north half (N. ½) of section thirty-four (34) and the west half (W. ½) of section thirty-five (35); all in township fifteen (15) south, range twelve (12) east, M. D. B. & M.

Beginning at the northwest corner of the southwest quarter (SW. ¼) of the northwest quarter (NW. ¼) of section one (1), township sixteen (16) south, range twelve (12) east, M. D. B. & M.; thence east 1,320 feet, m. o. l., to the center of the northwest quarter (NW. ¼) of section one (1); thence south 1,320 feet, m. o. l., to the southeast corner of the southwest quarter (SW. ¼) of the northwest quarter

(NW. ¼) of section one; thence west 1,320 feet, m. o. l., to the west quarter corner of section one (1); thence north 1,320 feet, m. o. l., to the point of beginning, being the southwest quarter (SW. ¼) of the northwest quarter (NW. ¼) of section one (1), all in township sixteen (16) south, range twelve (12) east, M. D. B. & M.

Beginning at the center of section one (1); township sixteen (16) south, range twelve (12) east; thence east 1,320 feet, m. o. l., to the northeast corner of the northwest quarter (NW. ¼) of the southeast quarter (SE. ¼) of section one (1); thence south 1,320 feet, m. o. l., to the center of the southeast quarter (SE. ¼) of section one (1); thence east 1,320 feet, m. o. l., to the northeast corner of the southeast quarter (SE. ¼) of the southeast quarter (SE. ¼) of section one (1); thence south 1,320 feet, m. o. l., to the southeast corner of section one (1); thence west 2,640 feet, m. o. l., to the south quarter corner of section one (1); thence north 2,640 feet, m. o. l., to the point of beginning, being the south half (S. ½) of the southeast quarter (SE. ¼) and the northwest quarter (NW. ¼) of the southeast quarter (SE. ¼) of section one (1), township sixteen (16) south, range twelve (12) east, M. D. B. & M., containing in all 2,560 acres, m. o. l.

and in support of said application states:

That applicant is a native-born citizen of the United States, a resident of the city of Los Angeles, California; his business address, 1221 Subway Terminal Building, Los Angeles, California.

That applicant does not own or hold, nor is he interested in any permit or lease for oil or gas on the same geological structure upon which is situated the lands hereby applied for, nor is it interested in any other pemit for lease in the State of California.

[fol. 12] That to the best of applicant's knowledge and belief the land applied for is not within any known geological structure of a producing oil or gas field.

That according to the best knowledge and belief of geologists of applicant, the land so described is favorable for prospecting for oil and gas because of formations in character similar to formations in which oil is produced in other districts.

It is the intention of applicant to explore said tract by drilling wells at such place or places which may be adjudged most advantageous by his geologists, and that he will show due diligence in said work of exploration.

That your applicant has been engaged in the business of prospecting and developing oil lands for more than twenty (20) years, and, in the event a permit is granted, has ample capital available with which to sink a well on said premises any depth necessary in order to properly explore and develop said premises.

That three references as to applicant's reputation and business standing are:

Security-First National Bank of Los Angeles, 7th and Spring Streets, Los Angeles, California.

F. C. Elsey, vice president, Kern County Land Company, 910 American Bank Building, San Francisco, California.

H. H. Welsh, attorney, Chandler-Rowell Building, Fresno, California.

In evidence of his good faith and in compliance with the rules and regulations, applicant is accompanying this application with a surety bond in the sum of one thousand ($1,000) dollars, and the sum of twenty-eight ($28.00) dollars in currency of the United States, being $2.00 for each one hundred sixty (160) acres or fraction of land for which a permit is requested.

Wherefore, your applicant respectfully requests that your department issue to him a permit to prospect said land for oil and gas under the terms of "An act to promote the mining of coal phosphate, oil, oil shale, gas, and sodium on the public domain," and known as Public 146, 66th Congress, approved February 25, 1920.

W. B. Pyron.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

W. B. Pyron, being first duly sworn, deposes and says:

That he is the applicant in the foregoing application; that he has read the said application and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on applicant's in-

formation and belief, and as to such matters so stated on information and belief that he believes it to be true.

W. B. Pyron.

Subscribed and sworn to before me this 9th day of December, 1929. Rosa Kaskel, Notary Public in and for the County of Los Angeles, State of California, and residing therein. (Seal.)

[fol. 13] Affidavit of Citizenship

STATE OF CALIFORNIA,
County of Los Angeles, ss:

W. B. Pyron, being first duly sworn, deposes and says: That he is the applicant in the foregoing attached application for an oil and gas permit; that he is a native-born citizen of the United States of America and a resident of the State of California.

W. B. Pyron.

Subscribed and sworn to before me this 10th day of December. 1929. Rosa Kaskel, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

AMENDED ANSWER AND RESPONSE TO THE RULE—Filed Feb. 28, 1930

* * * * * * *

Come now Ray Lyman Wilbur and C. C. Moore, designated herein as respondents, and by way of return to the rule to show cause and for their joint answer to the petition say as follows:

1. They admit the allegations of paragraph 1.

2. They admit the allegations of paragraph 2.

3. They admit that the portion of paragraph 3 quoted from section 1 of the act of February 25, 1920, is to be

found in said section; that the excerpts quoted from sections 13, 14, 32, and 37 appear in the corresponding sections of the act. The intent and purpose of the act, however, are questions of law to be ascertained by a consideration of the entire act and in connection herewith, are not questions to be determined by the respondents. The allegation of the petitioner therefore as to the intent and purpose thereof is neither affirmed nor denied by respondents.

4—5. They admit the allegations of paragraphs 4 and 5.

6. Because they have no personal knowledge of the facts upon which the allegations of paragraph 6 are based, respondents are unable to admit them as detailed, and, therefore, deny all of such allegations not herein specifically admitted. They specifically admit that Order No. 338 was issued as alleged, and that the register of the land office at Sacramento, California, in compliance therewith received no applications for permits to prospect for oil and gas on public lands after March 12, 1929, the date named therein.

7. They admit the allegations of paragraph 7.

8. They admit that the statements were contained in said application as alleged, but inasmuch as they made no exami- [fol. 14] nation of the facts necessary to ascertain the truth thereof, they are without knowledge of the truth thereof, either then or now, and are, therefore, unable either to affirm or deny them.

9. They admit the allegations of paragraph 9.

10. Paragraph 10 contains no allegations which require an answer by respondents.

11. They admit the allegations of paragraph 11.

12. Respondents deny each and every allegation in paragraph 12 except such as are by this answer specifically admitted. They admit that the application of petitioner was not received for filing by the Commissioner of the General Land Office and was returned by him to the attorneys for petitioner who had transmitted the same to him, by his office letter of December 16, 1929, a copy of which is attached hereto as Exhibit A and is made a part hereof. That such action was taken by him because of the general policy of the President of the United States to conserve oil and gas

on public lands, as outlined in the orders of the Secretary of the Interior Nos. 337 and 338, copies of which are hereto attached as Exhibits B and C, and each of them are made a part hereof. That by virtue of and pursuant to the aforesaid administrative policy to conserve the oil and gas on public lands of the United States, it was no part of the official duty of the respondents, or either of them, or of the register of the land office at Sacramento, California, to receive and file petitioner's application, as the legal effect of the action of the Secretary of the Interior aforesaid in effectuating the same had operated temporarily to withdraw the public lands of the United States containing oil and gas, from further prospecting for and development of such minerals.

13. Respondents deny all and singular the material allegations of paragraph 13 of the petition. Said paragraph contains many assumptions and conclusions of law which respondents are advised by counsel they are not called upon to respond, and as to such allegations they neither affirm nor deny them.

14. Respondents deny all and singular the allegations of paragraph 14.

15. Further answering, respondents allege that the administration of the act of February 25, 1920 (41 Stat. 437, section 32), is reposed in the Secretary of the Interior, with whose authority, reasonably exercised, the courts may not interfere unless the Secretary fails, refuses, or neglects to perform a mandatory, ministerial duty imposed by the terms of the act.

16. Further answering, respondents allege that the language of section 13 of the act is permissive, not mandatory and has been so construed and acted upon by the Secretary of the Interior during the nine years intervening since the date of its passage. Its context plainly reposes in the Secretary of the Interior the discretion either to issue or decline to issue prospecting permits. Neither section 13 nor any other section, nor any rule or regulation promulgated in the administration of the act, vests any right in an applicant for a permit, to receive the same. On the contrary, section 2 of the regulations issued March 11, 1920, by the Secretary of the Interior under said act of February

25, 1920, reprinted and reissued by the Secretary of the Interior October 29, 1920, in force at date of petitioner's application, and still in force, expressly provides:

[fol. 15] "It should be understood that under the act, the granting of a prospecting permit for oil and gas is discretionary with the Secretary of the Interior, and any application may be granted or denied, either in part or in its entirety as the facts may be deemed to warrant."

The securing of a permit or license to prospect public lands for oil and gas is a privilege and not a right. Petitioner does not allege that he had performed any work or expended any money or other thing of value in, upon, or for the development of the land described in the application, nor that he had surrendered to the United States any claim, right, or interest in this or other lands of the United States which would constitute a legal or equitable claim or right to receive a permit; neither does he disclose that any right, of whatsoever nature, has been acquired by him to receive a permit, but he *is* simply sets forth a state of facts which indicate that he is qualified as an applicant and has thus placed himself in a position to apply for and receive a permit if and when issued by the Secretary of the Interior. Further than that, he shows no acquired status involving fixed or vested rights to enter public land of the United States. The petition therefore states no ground upon which the court will be justified in issuing the writ sought.

Wherefore, respondents pray that the rule be discharged, the petition dismissed, and that petitioner take nothing herein; that respondents be permitted to go hence without day, with their costs.

Ray Lyman Wilbur, Secretary of the Interior.
(Signed) C. C. Moore, Commissioner, General Land Office.

Duly sworn to by Ray Lyman Wilbur and C. C. Moore. Jurats omitted in printing.

[fol. 16] EXHIBIT "A" TO AMENDED ANSWER

December 16, 1929.

"A"CAO.

Returning application for permit to prospect for oil and gas.

Messrs. Dunnington, Walker, Gregg & Gregg, Investment Building, Washington, D. C.

GENTLEMEN: Reference is had to your letter of December 14, 1929, transmitting as attorneys for W. B. Pyron, of Los Angeles, California, an application to prospect for oil and gas on certain lands in Fresno County, California, under the act of February 25, 1920 (41 Stat. 437), together with a $1,000 surety bond executed by Pyron and the National Surety Company.

By telegram of March 13, 1929, to the registers of the district land offices, approved by the Secretary of the Interior, they were directed to refuse any oil and gas applications for permit filed after March 12, 1929, and in departmental order No. 338, issued March 20, 1929, it was stated therein (paragraph 7) that:

"Registers of local land offices will not receive applications for oil and gas permits after March 12, 1929."

You informally advised this office that similar or same application had been presented to the district land office and had been refused, and for that reason was left in this office. At the same time you tendered a fee of $32.00, the acceptance of which was verbally refused.

The instructions referred to, while directed to the registers of the district land offices, apply equally to this office and to the department, and in accordance therewith the application and bond are herewith returned to you having been made of record in this office.

Very respectfully, (Signed) C. C. Moore, Commissioner.

EXHIBIT B TO AMENDED ANSWER

Order No. 337

United States Department of the Interior, Washington

March 16, 1929.

The Federal oil conservation policy announced by President Hoover will be energetically executed by the Interior Department.

There are more than 5,000 applications for oil and gas permits on public lands pending in the General Land Office in Washington and an unknown number in the field offices. Steps were taken several days ago toward the rejection of all such applications, and registers of local land offices have been instructed not to receive new applications.

Probably in none of the cases on hand has the applicant expended money for developmental purposes, although he may have gone to some expense in opposing conflicting claims or furnishing additional evidence in support of his application.

Where land covered by pending applications is likely to be drained by adjoining wells on privately owned lands, the question of granting permits on Government land will be considered in the light of facts developed by departmental investigation.

[fol. 17] With regard to the 20,000 outstanding permits on public lands, the department will deal fairly with holders who have been diligent in maintaining their equities. Where actual drilling operations have been started and are being continued, opportunity will be given to carry on developmental work to finally determine the character of the land. Immediate steps will be taken, however, to cancel all such permits where no drilling has been done or money spent in development.

To determine the facts in connection with existing oil and gas permits, I have named a committee consisting of the Commissioner of the General Land Office, the Director of the Geological Survey, and the solicitor of the department. They will consider the extent of operations which have been prosecuted under outstanding permits to determine whether permittees have acquired equities which should

be recognized and to make appropriate recommendations.

Where permits are now in good standing, either because of recent issue or previous extension of time, no action will be taken during the remaining period covered by the permit. When that time has expired, however, and the permittee has failed to comply with the terms of his permit, he will be called upon immediately to show cause why the permit should not be canceled. This includes so-called group developments heretofore approved and in which extensions have been allowed, where permittees are engaged in a joint drilling program, test wells being drilled by a responsible drilling company on some of the public lands in the area covered by the permits. So long as this program is being diligently prosecuted, no adverse action will be taken.

No leases will be issued for oil and gas production unless required by mandate of law, such as discovery under existing permits, as provided by the mineral leasing act, or through the advertisement of a minimum of 25,000 acres of Osage Indian lands annually, as directed by the act of Congress approved March 2, 1929.

(Signed) Ray Lyman Wilbur, Secretary.

EXHIBIT C TO AMENDED ANSWER

Order No. 338

United States Department of the Interior, Washington

March 20, 1929.

The following outlines the general procedure in the Department of the Interior for executing the President's public-land oil-conservation policy:

1. All oil and gas applications and permits pending in the office of the First Assistant Secretary of the Interior, under the general leasing act, will be returned to the General Land Office.

2. All oil and gas cases pending in the office of the solicitor will be reviewed to determine their present status. Those coming within the new policy should be returned to the General Land Office.

3. The preparation of letters in the General Land Office calling upon delinquent permittees to show cause why their [fol. 18] permits should not be canceled will be expedited.

4. Oil and gas permits now in good standing will not be proceeded against so long as the terms of the permits are being timely complied with.

5. Where a permittee is entitled to a lease because of discovery, it is mandatory to lease only one-fourth of the area, under strict interpretation of the President's oil policy, except that when the permit covers 160 acres or less the permittee would be entitled to lease the full acreage. The remainder will not be leased unless such action is required in the public interest.

6. The departmental committee, consisting of the solicitor, the Commissioner of the General Land Office, and the Director of the Geological Survey, will consider the extent of operations which have been prosecuted under existing oil and gas permits, to determine whether permittees have acquired equities which should be recognized and make appropriate recommendations to the Secretary. In reviewing permits, representative cases may be recommended for public hearing before the Secretary of the Interior to determine lines of policy.

7. Registers of local land offices will not receive applications for oil and gas permits after March 12, 1929, and will reject all pending applications for permits. They will forward to the General Land Office all applications for extensions of time, etc., relative to outstanding permits.

8. Applications for extension of permits on hand should be disposed of promptly: Those not involving expenditure of money in development work will be denied by the General Land Office. All other cases will be referred to the special committee by memoranda of the General Land Office showing the facts disclosed by the record, and of the Geological Survey as to the status of development work.

9. The General Land Office will hold for cancellation, allowing 15 days in which to show cause, all permits on which there is no prima facie evidence that expenditure of money in development work has been made. All other cases should be referred to the special committee by memoranda

of the General Land Office showing the facts disclosed by the record and of the Geological Survey as to status of development work.

10. All oil and gas permits in the Geological Survey pending report to the General Land Office will be promptly considered under the new policy. Where these cases involve conflict of agricultural and mineral rights, or questions of similar character, they should be completed by the Geological Survey. All others should be returned to the General Land Office with appropriate report when such is required under the new policy; otherwise without report.

11. Supervisors of oil and gas operations in the Geological Survey must deny approval to notices of intention to drill on permits that are not shown to be in good standing by the terms of the permit itself or an approved extension of time.

12. The Geological Survey will report to the Secretary on the likelihood of oil and gas drainage of Government lands in various producing and wildcatting fields where a claim of drainage is made. The special committee will consider the question of drainage only when incidentally involved in individual permits before it for consideration.

[fol. 19] 13. Permits issued and outstanding in Executive order Indian reservations under the act of March 3, 1927, will be considered and disposed of in the same manner as provided in the foregoing paragraphs.

Ray Lyman Wilbur, Secretary of the Interior.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MEMORANDUM—Filed Apr. 15, 1930

On Submission After Final Hearing

* * * * * * *

The above-entitled case, together with the cases of McLennan v. Wilbur, No. 76795; Retherford v. Wilbur, No. 76911 and Paris v. Wilbur, No. 77213 were submitted for

final hearing. A waiver of a jury trial has been filed and the oral testimony of one witness has been heard in the instant case. In the three other cases referred to no issues of fact are involved.

These four cases present the same question and it is primarily a question of law. Similar cases involving the same question had previously been heard and submitted to Mr. Justice Bailey, and on April 8th, last, he filed an opinion in the two cases submitted to him, in which he held that the writ of mandamus should issue directing the Secretary of the Interior to reinstate the applications of the relators and to proceed therewith according to law. In that opinion the writer of the present memorandum concurs, both in its reasoning and in the conclusions reached by the learned justice.

This memorandum is to be taken as applying to all of the four cases submitted to him, as stated above. The writer desires now, in a few sentences, to emphasize certain phases of the matter.

The act of Congress, which is invoked by the relators in the pending cases, was approved February 25, 1920, and, as pointed out by Justice Bailey in his opinion, the act is entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain." We are only concerned now with those provisions of the act which deal with oil and gas permits.

The act authorizes the Secretary of the Interior to promulgate necessary and proper rules and regulations to govern in the execution of the statute. (Section 32.) Pursuant thereto the Secretary promulgated oil and gas regulations under date of March 11, 1920. These regulations occupy some twenty-five printed pages, and there has also been published by the Secretary, in the form of an appendix to his regulations, a digest of opinions and decisions in connection with the administration of the act of Congress mentioned, as applied to oil and gas. This appendix was approved by the Secretary of the Interior under date of October 6, 1920, and contains thirteen printed pages. We find in regulation No. 3 language in substance to the effect that the granting of a permit or lease for the development or production of oil or gas will not preclude other permits or leases of the same land for the mining of other minerals under the act, "all to the end that the full development of

the mineral resources may be secured." On page 36 of the [fol. 20] appendix, above mentioned, we find it again declared, in effect, that the purpose of the act was "to the end that the best development of the lands, both for mineral and agricultural purposes, may be accomplished." We thus have constructions by the Secretary of the Interior of the purpose of the legislation in question, that it is that the full development of the mineral resources may be secured.

With scrupulous care the act reserves certain lands from its operation by "excluding lands acquired under the act known as the Appalachian Forest Act, approved March 1, 1911 (36 Statutes, 961), and those in national parks, and in land withdrawn or reserved for military or naval uses or purposes, except as herein provided." (Section 1.) It enacts that the act shall operate upon deposits of oil, oil shale, or gas, and lands containing such deposits owned by the United States including those in national forests.

The duty of executing the provisions of this act is conferred upon the Secretary of the Interior; and nowhere in the act, in the opinion of the court, is any power to suspend its operation or dispense with its execution conferred upon him. And this court is further of the opinion that no power resides in either the executive or judicial branches of the Government to suspend or dispense with the execution, administration, and enforcement of a constitutionally enacted law of the Congress.

In each of the four cases mentioned above the writ of mandamus will issue, in the McLennan, Retherford, and Paris cases, directing the Secretary of the Interior to reinstate the applications of relators and proceed therewith according to law, and the Pyron case directing the Secretary of the Interior to accept for filing and file the application of relator and proceed therewith according to law.

Orders accordingly will be settled and signed on presentation and notice.

F. L. Siddons, Justice.

April 15, 1930.

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

JUDGMENT—April 19, 1930

Session resumed pursuant to adjournment, Hon. F. L. Siddons, justice, presiding.

* * * * * * *

This cause came on to be heard at this term upon the petition filed, the rule to show cause issued, the answer of respondents filed herein, and the oral testimony presented to the court by a witness for petitioner, upon waiver of trial by jury, and after being argued by attorneys of record for the respective parties was submitted to the court. Thereupon, the same having been considered, it is this 19th day of April, 1930, adjudged and ordered that a writ of mandamus do forthwith issue in this cause directed to the Secretary of the Interior and the Commissioner of the General Land Office of the United States, requiring them to accept for filing and to file the application of the petitioner, W. B. Pyron, specified in this cause, and to proceed therewith according to law.

[fol. 21] Further it is considered that petitioner recover of the respondents his costs of suit, to be taxed by the clerk.

From the foregoing judgment, the respondents, by their attorneys, in open court, note an appeal to the Court of Appeals of the District of Columbia, which is by the court allowed.

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

STIPULATION RE EVIDENCE, ETC.—Filed May 29, 1930

It is stipulated by Ray Lyman Wilbur, Secretary of the Interior, and C. C. Moore, respondents, by their attorneys, E. C. Finney and O. H. Graves, and W. B. Pyron, petitioner, by his attorneys, James G. Leovy, A. W. Gregg, Weston Vernon, jr., and John W. Fisher, that on February 28, 1930, at the hearing in the above-entitled cause before Mr. Justice Siddons, trial by jury having been waived by the parties of

record by written stipulation, James G. Leovy testified on behalf of the petitioner in substance as follows:

That on the 9th day of December, 1929, W. B. Pyron, appellee, through his attorney, James G. Leovy, advised the register of the United States district land office at Sacramento, California, by telephone, that said W. B. Pyron was proposing to file with said register an application for a permit to prospect for oil and gas upon the land described in paragraph 7 of the petition for writ of mandamus herein and incorporated in the transcript of record in this case on appeal.

That said register at said time advised said James G. Leovy that in accordance with Department of the Interior Order No. 338, no applications for permits to prospect for oil and gas on public lands were being or could be received by said register, and that the said proposed application of said W. B. Pyron would not be accepted for filing and would not be filed, nor would the accompanying fee and bond be accepted or filed, but said application, fee, and bond would be returned to said W. B. Pyron without acknowledgment of their receipt and without any record of their receipt having been made upon the books or records of the said district land office.

That said James G. Leovy, advised the said register that he proposed to institute legal proceedings to compel the acceptance of said application, fee, and bond, and was advised by said register that if such proceedings were contemplated the matter of filing said application, fee, and bond should be taken up with proper officials of the Department of the Interior at Washington, D. C., and said application, fee, and bond should be presented to such officials for filing.

That said W. B. Pyron, through his attorneys, did present and tender to the Commissioner of the General Land [fol. 22] Office of the United States at Washington, D. C., one of respondents, an application to prospect for oil and gas upon the land described in paragraph 7 of the petition for writ of mandamus filed herein and incorporated in the transcript of record in this case on appeal, which application was accompanied by the necessary fee and bond, but that the said commissioner refused to accept for filing or to file said application, fee, and bond, and returned same to

petitioner's attorneys as per Exhibit "A" to the amended answer and response to the rule.

It is further stipulated that the foregoing contains the substance of all the evidence given on the hearing of this cause.

It is further stipulated and agreed that at the hearing in this cause aforesaid, E. C. Finney and O. H. Graves, attorneys for the respondents, agreed in open court that the allegations of paragraph 6 of the petition for a writ of mandamus filed herein and incorporated in the transcript of record in this case on appeal were to be deemed as admitted by respondents.

(Signed) E. C. Finney, O. H. Graves, Attorneys for Appellants and Respondents. James G. Leovy, A. W. Gregg, Weston Vernon, Jr., John W. Fisher, Attorneys for Appellee and Petitioner.

Leave to file granted this May 29, 1930.

F. L. Siddons, Justice Supreme Court of the District of Columbia.

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 3, 1930

The respondent presents his assignment of errors as follows:

1. The court erred in finding for the petitioner and against the respondent and in granting the writ of mandamus herein.

2. The court erred in holding that the acts of the President of the United States and of the Secretary of the Interior in the premises, together or separately, do not constitute a temporary executive withdrawal of the public lands subject to prospecting for oil and gas under the provisions of the act of February 25, 1920, commonly called the oil-leasing act, from the purposes of said act.

3. The court erred in holding that the oil-leasing act does not repose in the Secretary of the Interior a discretion

broad enough to permit him, in the exercise of his official judgment, to refuse to issue permits to any applicant.

[fols. 23 & 24] 4. The court erred in holding that the oil-leasing act does not repose in the Secretary of the Interior a discretion broad enough to permit him, in the exercise of his official judgment, to refuse to issue permits to any applicant in the absence of specific rules and regulations.

5. The court erred in holding that the provisions of the last subdivision of Rule 2 of the rules and regulations do not vest in the Secretary of the Interior discretion to refuse to grant any permit in the due exercise of his official duty.

(Signed) O. H. Graves, Attorney for Respondent

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed June 3, 1930

* * * * * * * * *

The clerk in making up the transcript of record on appeal in the above-entitled cause, will include:

1. Petition and exhibits.
2. Amended answer and exhibits.
3. Stipulation filed May 29, 1930.
4. Opinion and judgment of the court.
5. Notation and allowing of appeal.
6. Assignment of errors.
7. This designation.

(Signed) O. H. Graves, Attorney for Respondents.

Service acknowledge- this 29th day of May, 1930.
Weston Vernon, Jr., Attorney for Petitioner.

Clerk's certificate to foregoing transcript omitted in printing.

Tuesday, October 14th, A. D. 1930.

No. 5241

RAY LYMAN WILBUR, Secretary of the Department of the Interior, Appellant,

v.

UNITED STATES OF AMERICA ex Relatione ROY G. BARTON

No. 5247

RAY LYMAN WILBUR, Secretary of the Interior Department, Appellant,

v.

THE UNITED STATES OF AMERICA ex Relatione ETHEL MCLENNAN

No. 5250

RAY LYMAN WILBUR, Secretary of the Interior, and C. C. Moore, Commissioner of the General Land Office, Appellants,

v.

W. B. PYRON

and No. 5251

RAY LYMAN WILBUR, Secretary of the Interior, and CHARLES MOORE, Commissioner of the General Land Office, Appellants,

v.

UNITED STATES OF AMERICA ex Rel. H. H. SIMPSON

On motion, William O. Wilson, Esq., is allowed to file brief and take part in oral argument in No. 5247, as amicus curiæ, on behalf of the State of Wyoming.

On motion, P. Q. Nyce, Esq., is allowed to file brief and take part in oral argument in No. 5247, as amicus curiæ, on behalf of Utah, New Mexico and Montana.

The argument in the above entitled causes was commenced by Mr. O. H. Graves, attorney for the appellants, and was continued by Mr. E. C. Finney, attorney for the appellants.

Wednesday, October 15th, A. D. 1930.

* * * * * * *

No. 5241

RAY LYMAN WILBUR, Secretary of the Department of the Interior, Appellant,

v.

UNITED STATES OF AMERICA ex Relatione ROY G. BARTON

No. 5247

RAY LYMAN WILBUR, Secretary of the Interior Department, Appellant,

v.

THE UNITED STATES OF AMERICA ex Relatione ETHEL McLENNAN

No. 5250

RAY LYMAN WILBUR, Secretary of the Interior, and C. C. MOORE, Commissioner of the General Land Office, Appellants,

v.

W. B. PYRON

and No. 5251

RAY LYMAN WILBUR, Secretary of the Interior, and CHARLES C. MOORE, Commissioner of the General Land Office, Appellants,

v.

UNITED STATES OF AMERICA ex Rel. H. H. SIMPSON

The argument in the above entitled causes was continued by Mr. James Conlon, attorney for the appellant in No.

5241, and by Mr. Lewis E. Hoffman, attorney for the appellant in No. 5247, and by Mr. James G. Leovy, attorney for the appellant in No. 5250, and by William O. Wilson, Esq., Attorney General of the State of Wyoming, as amicus curiæ, and by Mr. Peter Q. Nyce, as amicus curiæ, on behalf of New Mexico, Utah and Montana, and by Mr. Chester I. Long, as amicus curiæ, on behalf of the State of Colorado, and was concluded by Mr. E. C. Finney, attorney for the appellants.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 5247

RAY LYMAN WILBUR, Secretary of the Interior, Appellant,

v.

THE UNITED STATES OF AMERICA ex Relatione ETHEL MCLENNAN

and No. 5250

RAY LYMAN WILBUR, Secretary of the Interior, and C. C. MOORE, Commissioner of the General Land Office, Appellants,

v.

W. B. PYRON

and No. 5251

RAY LYMAN WILBUR, Secretary of the Interior, and CHARLES C. MOORE, Commissioner of the General Land Office, Appellants,

v.

UNITED STATES OF AMERICA ex Rel. H. H. SIMPSON

(Before Martin, Chief Justice, and Robb and Van Orsdel, Associate Justices)

These cases were argued and presented with No. 5241, Wilbur v. Barton, just decided, and the decision in that case is controlling here.

The judgment in each case will be reversed, and the cause remanded.

Reversed.

Chas. H. Robb, Associate Justice.

For reasons stated in his dissenting opinion in No. 5241, Wilbur v. Barton, Mr. Justice Van Orsdel dissents.

Endorsed: Nos. 5247, 5250, 5251. Ray Lyman Wilbur, Secretary of the Interior, Appellant v. United States of America ex relatione Ethel M. McLennan; Ray Lyman Wilbur, Secretary of the Interior, et al., Appellant v. W. B. Pyron; Ray Lyman Wilbur, Secretary of the Interior, et al., Appellants v. United States of America ex rel. H. H. Simpson. Opinion of the Court per Mr. Justice Robb. Court of Appeals, District of Columbia. Filed December 1, 1930. Henry W. Hodges, Clerk.

In the Court of Appeals of the District of Columbia

No. 5241

Ray Lyman Wilbur, Secretary of the Interior, Appellant,

v.

United States of America ex Relatione Roy G. Barton

(Before Martin, Chief Justice, and Robb and Van Orsdel, Associate Justices)

Mr. Justice Robb delivered the opinion of the Court:

Appeal from a judgment in the Supreme Court of the District directing the issuance of a writ of mandamus to compel the Secretary of the Interior "to reinstate the application of the petitioner, Roy G. Barton, * * * and to proceed thereon according to law."

Should the judgment be affirmed, it probably would result in the reinstatement of "more than 5,000 applications for oil and gas permits on public lands pending in the General Land Office in Washington and an unknown number in the field offices."

The cause was heard on petition and answer. There is no dispute as to the facts, which are substantially as follows: On June 6, 1928, Barton filed an application in the Land Office at Las Cruces, New Mexico, for a permit to prospect for oil and gas in a certain described tract of public land of the United States (Act of February 25, 1920; 41 Stat. 437).

On March 13, 1929, the Department of the Interior released a "Memorandum for the Press", reading in part as follows: "Secretary Wilbur, of the Department of the Interior, to-day asked the Commissioner of the General Land Office to send instructions to all local land offices to the effect that they are not to receive further applications for permits to prospect for oil and gas on the public domain, and to reject all applications now pending. These instructions are in accordance with the statement issued at the White House yesterday to the effect that 'there will be complete conservation of Government oil in this administration.'"

On the same day a telegram was forwarded by the Department to the various United States land offices, including the land office at Las Cruces, New Mexico, reading in part as follows:

"No oil and gas prospecting permits will be issued on and after March 12, 1929. Reject all applications for oil and gas permits now pending in your office and receive no more. All orders for drawings hereby revoked."

On March 16, 1929, Departmental Order No. 337 was issued, reading in part as follows:

"The Federal oil conservation policy announced by President Hoover will be energetically executed by the Interior Department. There are more than 5,000 applications for oil and gas permits on public lands pending in the General Land Office in Washington and an unknown number in the field offices. Steps were taken several days ago toward the rejection of all such applications, and registers of local land offices have been instructed not to receive new applications. Probably in none of the cases on hand has the applicant expended money for development purposes, although he may have gone to some expense in opposing

conflicting claims or furnishing additional evidence in support of his application. * * * To determine the facts in connection with existing oil and gas permits, I have named a committee consisting of the Commissioner of the General Land Office, the Director of the Geological Survey, and the solicitor of the department. They will consider the extent of operations which have been prosecuted under outstanding permits to determine whether permittees have acquired equities which should be recognized and to make appropriate recommendations. Where permits are now in good standing, either because of recent issue or previous extension of time, no action will be taken during the remaining period covered by the permit. When that time has expired, however, and the permittee has failed to comply with the terms of his permit, he will be called upon immediately to show cause why the permit should not be cancelled. * * * No leases will be issued for oil and gas production unless required by mandate of law, such as discovery under existing permits, as provided by the mineral leasing act, or through the advertisement of a minimum of 25,000 acres of Osage Indian lands annually, as directed by the act of Congress approved March 2, 1929."

This Order also was incorporated in a "Memorandum for the Press" issued by the Department on the same day.

On March 26, 1929, the Commissioner of the General Land Office, "pursuant to instructions approved by the Secretary of the Interior March 13, 1929, and in accordance with the policy announced in Departmental Order No. 337 of March 16, 1929, rejected" Barton's application. An appeal was taken, and the order of rejection was sustained by the Department in a decision dated September 4, 1929.

In his petition Barton avers "that there is nothing in or under the provisions of the act of February 25, 1920 (41 Stat. 437), * * * which requires your relator to make any substantial expenditures for reliable geological surveys upon the lands embraced in his oil and gas application * * * in order to entitle him to a permit for the lands described in said application"; and that "the Secretary of the Interior is without authority of law to reject his application upon any ground, and especially upon the ground alleged that no applications for permits will be allowed

after March 12, 1929, because of the adoption of a new policy as set out in said press notices of March 13, 1929, hereinabove quoted, and March 16, 1929, also identified as Departmental Order No. 337."

The answer admits, for the purposes of this suit, that Barton "was duly qualified under the law to receive the permit for which he applied; that at all times relator (Barton) was and is now ready, able, and willing to comply with all regulations made pursuant to the said act of Congress respecting the duties and obligations of permittee."

Did the orders of the Secretary of the Interior amount to a temporary withdrawal of the public land from location, entry, and exploration for the purpose of discovering oil or gas; and, assuming the withdrawal, did the mere filing of an application for a prospecting permit initiate a right in the applicant that could not be affected by the withdrawal?

The Act of June 25, 1910 (36 Stat 847), "to authorize the President of the United States to make withdrawals of public lands in certain cases", reads in part as follows:

"Be it enacted * * *, That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States including the District of Alaska and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress."

Prior to 1910 the President had acted in scores of cases without express statutory authority, and in United States v. Midwest Oil Co., 236 U. S. 459, his authority to make such withdrawals was expressly sustained.

There can be no doubt that the effect of the orders issued by the Secretary was to withdraw from further location, entry, and exploration for the discovery of oil and gas all public land, and that the purpose of such withdrawal was to meet conditions due to great overproduction and to conserve oil and gas in the public interest. That such was the intent of the Secretary and the understanding

of the public is equally plain. It is immaterial that the orders were not limited as to time, for the Act of 1910 provides that such withdrawals or reservations shall remain in force until revoked by the President or by an Act of Congress.

The next question to be determined is whether the withdrawal of the Secretary was the withdrawal of the President. It is settled law that "the President speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties" (Wilcox v. Jackson, 13 Pet. 498), and that "the acts of the heads of departments, within the scope of their powers, are in law the acts of the President" (Wolsey v. Chapman, 101 U. S. 755, 769). In the case last mentioned it was held that the order of the Secretary of the Interior, directing that the lands on the Des Moines River above the Raccoon Fork be reserved from sale, was in contemplation of law the order of the President and had the same effect as the proclamation mentioned in the Act of September 4, 1841 (5 Stat. 453). The Court said:

"A proclamation by the President, reserving lands from sale, is his official public announcement of an order to that effect. No particular form of such an announcement is necessary. It is sufficient if it has such publicity as accomplishes the end to be attained. If the President himself had signed the order in this case, and sent it to the registers and receivers who were to act under it, as notice to them of what they were to do in respect to the sales of the public lands, we can not doubt that the lands would have been reserved by proclamation within the meaning of the statute. Such being the case, it follows necessarily from the decision in Wilcox v. Jackson that such an order sent out from the appropriate executive department in the regular course of business is the legal equivalent of the President's own order to the same effect. It was, therefore, as we think, such a proclamation by the President reserving the lands from sale as was contemplated by the act."

See also United States v. Morrison, 240 U. S. 192; Northern Pacific Railway Co. v. Wismer, 246 U. S. 283; Relation of the President to the Executive Departments, 7 Op. Atty. Gen. 453.

In the present case the orders of the Secretary gave effect to the previously announced policy of the President, were acquiesced in by him, and were in legal contemplation his acts. Was the President vested with such authority?

It is not contended that the Act of June 25, 1910 (36 Stat. 847), expressly authorizing the President to make temporary withdrawal "from settlement, location, sale, or entry any of the public lands of the United States," has been repealed. The contention is that the Act of February 25, 1920 (41 Stat. 437), "to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," and providing that public lands containing deposits of such minerals "shall be subject to disposition in the form and manner provided by this Act," was mandatory, and that the President was without power to withdraw such lands from disposition as provided in the Act. Sec. 13 of that Act, relating to oil and gas, provides in part "that the Secretary of the Interior is hereby authorized, under such necessary and proper rules and regulations as he may prescribe, to grant to any applicant qualified under this Act a prospecting permit, which shall give the exclusive right, for a period not exceeding two years, to prospect for oil or gas upon not to exceed two thousand five hundred and sixty acres of land * * *. Whether the lands sought in any such application and permit are surveyed or unsurveyed the applicant shall, prior to filing his application for permit, locate such lands in a reasonably compact form and according to the legal subdivisions of the public land surveys if the land be surveyed * * *."

Sec. 14 provides in part that "upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit * * *."

There is no provision in the Act purporting to repeal or modify the Act of 1910, and in our view such a modification may not be implied. The provision in the first section that the lands containing certain named mineral deposits "shall be subject to disposition in the form and manner provided by this Act" is general, and no more mandatory than 1872 (17 Stat. 91, R. S. 2319, 2329) was the provision in the Act of ~~1897 (29 Stat. 526)~~

declaring all public lands containing petroleum or other mineral oils to be "free and open to occupation, exploration and purchase by citizens of the United States * * * under regulations prescribed by law"; and yet the President withdrew without direct congressional authority such public lands, and his action was sustained in the Midwest case (236 U. S. 459). But it is insisted that the Act of 1910 only authorizes the temporary withdrawal by the President of public lands "from settlement, location, sale, or entry," and that the application for permit and the lease which may follow discovery of oil under the Act of 1920 are not embraced within those terms. It is apparent, we think, that the Act of 1910 was intended to be of wide scope and recognized the authority of the President temporarily to prevent the alienation of public lands or any interest therein adverse to the United States.

In Mason v. United States, 260 U. S. 545, by Executive order dated December 15, 1908, lands had been "withdrawn from settlement and entry, or other form of appropriation." It was contended that this order did not include appropriations by mining locations. The Court observed: "The words 'settlement and entry,' it is said, apply only to the act of settling upon the soil and making entry at a land office, as, for example, under the homestead laws; that mining lands are acquired, not by settlement or entry, but by location and development; that *that* this process is not covered by the words 'other form of appropriation', limited, as they must be, by the associated specific words, to those forms of appropriation which are akin to a settlement and entry. * * * *If the appropriation of mineral lands by location and development be not akin to settlement and entry, what other form of appropriation can be so characterized?* (Italics ours.) None has been suggested and we can think of none. * * * Moreover, the circumstances leading up to and accompanying the issuance of the order demonstrate conclusively that its main, if not its only, purpose was to preserve from private appropriation the oil and gas which the lands were thought to contain pending investigation and congressional action, and this purpose would have been subverted by appropriations of the nature here involved quite as much as by other forms.

We conclude, therefore, that the mining locations here relied upon fell clearly within the withdrawal order and consequently were prohibited by it."

Under the Act of 1920, the applicant for a permit was required to locate and designate the lands sought in his application. The issuance of a permit and the discovery of "valuable deposits of oil or gas" entitled him to a lease—an interest in the land. This, we think, was akin to location or entry, as used in the Act of 1910.

If, as suggested by counsel for appellee, the Act of 1910 has no application, then it well might be held that an implied power to withdraw was reposed in the President under the Act of 1920. United States v. Midwest Oil Co., 236 U. S. 459.

Under the general mining laws a citizen was free to go upon the public domain. He did the work necessary to discover minerals, staked his claim, recorded notice in the mining district or county records, and his rights became fixed. Forbes v. Gracey, 94 U. S. 762; Belk v. Meagher, 104 U. S. 279. This was true as to public lands containing oil and gas until the Act of February 25, 1920 (41 Stat. 437). Under the provisions of that Act, as already appears, a citizen no longer has a right to go upon public lands of the United States to prospect for oil or gas, unless permitted to do so by the Secretary of the Interior, under such "proper rules and regulations as he may prescribe" (Sec. 13). It is at once apparent that there is a marked distinction between the old law and the new. Under the old law a citizen was free to make explorations as a matter of right. Under the new law he must apply for the privilege. Until that privilege is granted, through the issuance of a permit, he has no vested interest. It is apparent, we think, that Congress recognized the distinction between the old law and the new and that the President might at any time, if conditions changed, withdraw the public lands from exploration. Under Sec. 13 the Secretary is "authorized" to grant prospecting permits. Under Sec. 14, if a permit has been granted and the permittee has incurred the expense incident to the exploration and discovery of "valuable deposits of oil or gas", he "shall be entitled to a lease." Thus Congress recognized that the

mere filing of an application for a permit confers no vested right upon the applicant, but that if a permit be issued and he goes on the land and makes a discovery he has such an interest as must be recognized.

Congress, of course, knew that, if changed conditions rendered advisable the temporary withdrawal by the Executive of the public lands from further exploration, thousands of such applications for permits might be pending. It was careful, therefore, to distinguish between an application for a permit and the rights that might be acquired under an issued permit. Every applicant for a permit was charged with knowledge that the Executive might temporarily withdraw the lands from further exploration, and that his application was, therefore, subject to much authority of the Executive. We rule that the order of the Secretary rejecting Barton's application for a permit was a valid exercise of power by the Executive.

Mandamus is awarded, not as a matter of right, but in the exercise of a sound judicial discretion, to remedy and not to promote a wrong, to compel the performance of an actual duty rather than to direct the performance of an act which will work public or private mischief. While classed as a legal remedy, its issuance is largely governed and controlled by equitable principles. Duncan Townsite Co. v. Lane, 245 U. S. 308; Arant v. Lane, 249 U. S. 367; Ex Parte Skinner & Eddy Corp., 265 U. S. 86; Work v. Rives, 267 U. S. 175; Payne v. United States, 50 App. D. C. 119, 269 F. 198; Morgan v. Howard, 54 App. D. C. 3, 293 F. 650; Stowell v. Deming, 57 App. D. C. 223, 19 F. (2d) 697. In the exercise of a sound judicial discretion, the court must be controlled by settled legal principles.

As observed in the Midwest case (236 U. S. 471), "The President was in a position to know when the public interest required particular portions of the people's lands to be withdrawn from entry or location; his action inflicted no wrong upon any private citizen, and being subject to disaffirmance by Congress, could occasion no harm to the interest of the public at large." In the present case, his orders, issued through the Secretary, were intended to meet an emergency occasioned by the great over-production of oil and gas, the waste incident thereto, and other public considerations. There was available to him the advice of

the Attorney General on all questions of law that might be involved. It was necessary to interpret the applicable statutes, and we have expressed the view that they were correctly interpreted; but, in any event, it would require a very clear case to justify a court in arresting and suspending the action of the Executive taken in the public interest. The record does not present such a case.

The judgment is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

Endorsed: No. 5241. Ray Lyman Wilbur, Secretary of the Department of the Interior, Appellant, v. United States of America ex relatione Roy G. Barton. Opinion of the Court per Mr. Justice Robb. Court of Appeals. District of Columbia. Filed December 1, 1930. Henry W. Hodges, Clerk.

No. 5241

Mr. Justice VAN ORSDEL, dissenting:

I am compelled to dissent from the opinion and judgment of my associates.

It is conceded that the applicant Barton possessed all the qualifications necessary under the Leasing Act to entitle him to a permit. In other words, but for the order of the Secretary suspending the operation of the Leasing Act, he would have been compelled to grant Barton's application. We start, therefore, with an applicant entitled to a permit at the time the order was made suspending the provisions of the Leasing Act.

The Act of 1910, vesting authority in the President to withdraw public lands from "settlement, location, sale, or entry", specifically provides the terms upon which this Executive authority may be exercised. It must be done by a formal proclamation, which the Secretary of the Interior is required, by the terms of the Act, to report to Congress at the next regular session after the date of withdrawal. Prior to the enactment of this statute, lands had been withdrawn by proclamation of the President without any par-

ticular authority of statute. Congress, therefore, in the 1910 Act, manifested a clear intention to keep control of the withdrawals of public lands to the extent of specifying the manner and terms under which they could be withdrawn by the President, and in addition requiring notice to be given it of such withdrawals by the Secretary of the Interior in order that the action of the President, if deemed advisable, might be promptly revoked.

This brings us to what was done in this case. No proclamation, formal or otherwise, was ever issued by the President, and no notice of any proclamation was given Congress by the Secretary, as required by the 1910 Act. The order of the Secretary, telegraphed the local land officers, was based upon the following newspaper report under date of March 12, 1929, purporting to express the views of the President: "There will be no leases or disposal of government oil lands, no matter what category they may lie in, of government holdings or government controls, except those which may be mandatory by Congress. In other words, there will be complete conservation of government oil in this administration."

It will be observed that this merely purports to state a future policy which the President might or might not adopt in respect to government oil lands. It was not transmitted by the President to the Secretary of the Interior. The information upon which he based his order was obtained exclusively through the press. The press report merely referred to a declaration said to have been made by the President, which he could only make effective by a formal proclamation. There was, therefore, no proclamation whatever under the terms of the 1910 Act which would justify in the remotest degree the action taken by the Secretary of the Interior.

Neither can the action of the Secretary be upheld under the doctrine of acquiescence. It is undoubtedly true that "the acts of the heads of departments, within the scope of their powers, are in law the acts of the President". The President is the head of the Executive Department of the government, and the lawful acts of his subordinates will be presumed to be his acts, but this presumption does not extend to unlawful acts of subordinates. The difficulty

here is that the Secretary acted without the scope of his power in the suspension of the oil leasing act. He was totally without power to act until certain statutory conditions had been complied with; namely, the issue of a proclamation by the President.

The cases relied upon in the majority opinion are not in point. In Wilcox vs. Jackson, 13 Pet. 498, a preemption entry had been made upon land set aside and occupied for more than twenty years as a military reservation, on which the government had expended large sums of money under the direction of the Secretary of War. Of course, a long continued use of public land by the government itself for military purposes, or for other purposes, would constitute an occupancy by the government on its own land, amounting to a withdrawal of the land from entry and settlement; and, whether done by direct authority of the President or by the lawful act of the Secretary of War, the President, after this long lapse of time, would be assumed to have acquiesced in the withdrawal and occupation of the land.

The case of Wolsey vs. Chapman, 101 U. S. 755, has even less application to the present case than does the Wilcox case. Here, a large tract of land had been granted to the Territory of Iowa for the development of navigation on the Des Moines river. The execution of the Act was delegated to the Secretary of the Interior, and was accordingly within the lawful scope of the authority vested in him. A controversy arose as to the limits of the land granted—whether it extended beyond a point in the river known as Racoon Fork. The matter required determination from many angles by the Department of the Interior, and, to protect the interests of all concerned, the Secretary suspended settlement on the lands in question until the matter could be legally determined. It was said, and properly so, that the act of the Department, being within the scope of its powers, would be regarded in law as the act of the President. The difference between that case and the one at bar is that here there is only one law under which a withdrawal such as we are here considering can be made; namely, through the Proclamation Act of 1910. This act is a specific grant of power by Congress to the President by which he may in his discretion withdraw public lands from entry,

sale, or settlement. Being a grant of power belonging to Congress, it should strictly be complied with, and the courts will not imply compliance from circumstances such as those involved in this case.

The case of United States vs. Midwest Oil Company, 236 U. S. 459, has little or no analogy to this case. There, the proclamation of the President, issued before the enactment of the 1910 statute, hence without specific statutory authority, described accurately the territory withdrawn, the character of the land, and the object of withdrawal. The President, doubtful of his authority in the premises, submitted the whole matter to Congress for its approval. It resulted in the prompt enactment of the 1910 statute. The proclamation was prepared with all the formalities and dignity of a document promulgated by the President with a view to affecting great public and private interests. In that case the oil company entered upon the lands after the proclamation was issued. The court, in its opinion, strongly implied that if the entry upon the lands had been made prior to the issuance of the proclamation by the President, it would have had a different case. Here the application was filed prior to the order of the Secretary, and here there was no proclamation whatever as required by statute.

It is not true that the applicant was required to do nothing on the land before filing his application for a permit. He was required by the Leasing Act to seek out the location, to post notices, giving a description of the land for which application would be made—if surveyed land, by the lines of survey; if unsurveyed, by descriptive metes and bounds. This constituted an entry upon the land, which developed into a right with the filing of the application of which the applicant cannot be divested by any act of the Executive Department. This is settled law by numerous decisions of the Supreme Court as to entry upon public lands, such as homestead, preemption, etc. Entry upon oil lands is in every respect entitled to the same legal significance as entry upon lands for the purpose of acquiring title. In Mason v. United States, 260 U. S. 545, it was contended that the words "settlement and entry" applied only to the act of settling upon the soil and making entry in the land office, and that it did not apply to mining lands which it was

contended were not acquired by settlement and entry but by location and development, but the court said:

"If the appropriation of mineral lands by location and development be not akin to settlement and entry, what other form of appropriation can be so characterized? None has been suggested and we can think of none."

This is not an action to mandamus the President. The writ runs against the Secretary of the Interior and the Commissioner of the General Land Office. The President, so far as I am able to observe, has had nothing to do with this case. The case grew out of orders originated in the Land Department, based upon newspaper rumor; and the action here is to compel the Secretary of the Interior and the Commissioner of the General Land Office to perform purely administrative duties imposed upon them by law. That mandamus will lie for this purpose is too elementary to require citation of authority. While the judgment is to require a department officer to perform a purely administrative duty imposed by Congress, the court has no power under the sanction of "judicial discretion" to withhold its mandate, even though, in its judgment, to compel the enforcement might not be in the public interest. The policy of the law belongs to the legislative and not the judicial department of the government.

The court is called upon here to determine purely questions of law, and it is immaterial whether one, or five-thousand, or ten-thousand applicants would be affected by the court's decision. Neither, in the agitated state of the public mind, should the fact that this is an "Oil Case" entitle it to any particular sanctity in the eyes of the law, or furnish adequate ground for the wholesale slaughter of private property rights by judicial decree. The present inquiry is limited to determining the important questions of law here involved. It would seem, therefore, unnecessary to consider the facts stressed in the majority opinion "that the purpose of such withdrawals was to meet conditions due to great over-production and to conserve oil and gas in the public interest"; or that, if the judgment be affirmed in this case, "it would probably result in the reinstatement of 'more than five-thousand applications for oil

and gas permits on the public lands pending in the Land Office in Washington, and an unknown number in the field offices' ".

These might furnish commendable reasons for a proper and lawful withdrawal of the lands either by formal proclamation of the President or by Act of Congress, but we have hardly reached the period where the laws of the land can be suspended or repealed by the arbitrary methods here employed.

For the reasons stated, the judgment should be affirmed.

Endorsed: No. 5241. Ray Lyman Wilbur, Secretary of the Interior, Appellant, v. United States of America ex rel. Roy G. Barton. Dissenting Opinion per Mr. Justice Van Orsdel. Court of Appeals. District of Columbia. Filed December 1, 1930. Henry W. Hodges, Clerk.

Monday, December 1st, A. D. 1930.

* * * * * * *

No. 5250, October Term 1930

RAY LYMAN WILBUR, Secretary of the Interior, and C. C. MOORE, Commissioner of the General Land Office, Appellants,

v.

W. B. PYRON

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be and the same is hereby reversed; and that this cause be and the same is hereby remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

Per Mr. Justice Robb, December 1, 1930.

Mr. Justice Van Orsdel dissenting.

In the Court of Appeals of the District of Columbia

No. 5250

Ray Lyman Wilbur, Secretary of the Interior, and Charles C. Moore, Commissioner of the General Land Office, Appellants,

v.

United States ex Rel. W. B. Pyron, Appellee

Designation of Record

The Clerk will please prepare a transcript on application for certiorari to the Supreme Court of the United States in the above-entitled cause, including therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry showing argument of cause.
3. Opinion of the Court, and dissent.
4. The judgment or decree.
5. This designation.
6. Clerk's certificate.

John W. Fisher, A. W. Gregg, Attorney for Appellee.

Service accepted this 6th day of January, 1931.
O. H. Graves, Attorney for Appellants.

[Endorsed:] No. 5250. In the Court of Appeals, District of Columbia. Ray Lyman Wilbur, Secretary of the Interior, and C. C. Moore, Commissioner of the General Land Office, Appellants, v. United States ex rel. W. B. Pyron, Appellee. Designation of Record. A. W. Gregg, Attorney for Appellee, 822 Investment Bldg., Washington, D. C. Court of Appeals, District of Columbia. Filed Jan. 6, 1931. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the fore-

going printed and typewritten pages numbered from 1 to 46, inclusive, constitute a true copy of the transcript of record and proceedings of the said Court of Appeals in the case of Ray Lyman Wilbur, Secretary of the Interior, and C. C. Moore, Commissioner of the General Land Office, Appellants, vs. W. B. Pyron, No. 5250, January Term, 1931, as the same remain upon the files and record of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 7th day of January, A. D. 1931.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal Court of Appeals, District of Columbia.)

(392)

[fol. 48] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 2, 1931

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 35,665. District of Columbia Court of Appeals. Term No. 743. United States of America ex rel. W. B. Pyron, petitioner, vs. Ray Lyman Wilbur, Secretary of the Interior, and C. C. Moore, Commissioner of the General Land Office. Petition for a writ of certiorari and exhibit thereto. Filed February 18, 1931. File No. 35,665.